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Date: November 21, 2006 Name: John C. Freeman Registration No. 34,483 Signature: [Signature]

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& LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:

SHAWN S. CORNELIUS et al.

Appln. No.: 09/943,964

Filed: August 31, 2001

For: REMOTELY MONITORING A DATA
PROCESSING SYSTEM VIA A
COMMUNICATIONS NETWORK

Examiner: Kamal B. Divecha

Art Unit: 2151

Attorney Docket No: 10022/55

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Transmittal Letter (in duplicate); Reply Brief (in duplicate).
☒ Return Receipt Postcard

Fee calculation:

- ☐ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
☐ A petition or processing fee in an amount of \$_____ under 37 C.F.R. § 1.17(____).
☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$25=			x \$50=	
Indep.		Minus			x 100=			x \$200=	
First Presentation of Multiple Dep. Claim					+\$180=			+\$360=	
					Total	\$		Total	\$

Fee payment:

- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

November 21, 2006
Date

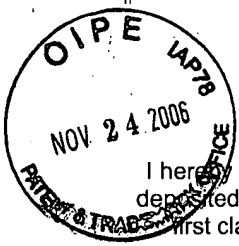
Respectfully submitted,

[Signature]
John C. Freeman (Reg. No. 34,483)

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John C. Freeman, Registration No. 34,483

Name of applicant, assignee or
Registered Representative

John C. Freeman

Signature

November 21, 2006

Date of Signature

Our Case No. 10022/55

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)

SHAWN S. CORNELIUS et al.)

Serial No. 09/943,964)

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For REMOTELY MONITORING A)
DATA PROCESSING SYSTEM VIA)
A COMMUNICATIONS NETWORK)

Examiner: Kamal B. Divecha

Group Art Unit No. 2151

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is in response to the Examiner's Answer mailed
September 21, 2006.¹

¹ Since the present Reply Brief is being filed within two months of the mailing date of the Examiner's Answer, the present Reply Brief is timely filed.

REPLY

A. Enablement

Appellants' Appeal Brief filed on June 20, 2006 (hereinafter "Appellants' Appeal Brief") traversed the rejection of claims 1-21 under 35 U.S.C. § 112, first paragraph, for failing to provide an enabling disclosure of the claimed inventions. The Examiner's Answer at page 19 asserts that "[t]here is simply no indication [in Appellants' Specification] of the fact wherein the data message [of independent claims 1 and 13] flows entirely through the first and second stage software components" (emphasis as original and bracketed material added). Based on the arguments in the Examiner's Answer at pages 18 and 19 that preceded the above assertion, it is apparent that the Examiner does not understand Appellants' argument made at pages 16-18 of Appellants' Appeal Brief. Appellants' argument was that fault detector 165 is able to detect the presence of a data message at an input or output of a first stage software component and the presence of a data message at an input or output of a second stage software component. In the case of the stage software components 161 and 162 shown in FIG. 6, should the detector 165 detect the presence of a data message at the input of the first stage software component 161 and later detect the same data message at the output of the second stage software component 162, then it logically follows that the data message has passed entirely through both of the first and second stage software components 161 and 162. The signals received from the detector 165 can be used to generate a status message indicating that the data message successfully traversed both stages (see Page 23, lines 11-22, Page 28, lines 14-24, Page 30, lines 17-23 and step S54 of FIG. 8 of Appellants' Specification). Since there is support in

Appellants' for detecting when a data message flows entirely through a software component, the rejection is improper and should be withdrawn.

B. Meaning of "Status Code" in Claim 22

The Examiner's Answer at pages 19 and 20 asserts for the first time that claim 22 does not recite that the "status code" input "into a remote software module" is the same as the recited "outputted status code" that is outputted "from an output of the remote software module." There is no basis for this assertion. Prior to the use of the claim term "the outputted status code", claim 22 recites "outputting the status code from an output of the remote software module." The phrase uses the word "the" prior to "status code" meaning that it refers to the prior recitation of "status code" which is input "into a remote software module." In other words, the status code output from the output of the remote software module in the manner recited in claim 22 is the same status code that was input into the remote software module. The term "outputted" in "outputted status code" merely describes the "status code" having been output from the remote software module. This interpretation is supported by Appellant's Specification at page 23, lines 11-22, page 28, lines 14-24, page 30, lines 17-23 and step S54 of FIG. 8. Accordingly, one of ordinary skill in the art would understand that the recited "outputted status code" is the same as the "status" code input in the remote software module.

With the above understanding in mind, it is noted that the Examiner's Answer has not disputed the fact that Ahmed does not disclose outputting the same ping that was originally sent (Appellants' Appeal Brief, page 19). Accordingly, claim 22 is not anticipated by Ahmed.

C. Anticipation Rejection Based on Multiple Embodiments

Appellants' Appeal Brief at page 20 traversed the rejection of claim 22 under 35 U.S.C. §102(e) as being anticipated by Ahmed for being based on combining the attributes of two different embodiments shown in FIGS. 2 and 3. The Examiner's Answer at page 21 asserts that FIGS. 2 and 3 show the same system. This is not the case. FIG. 2 shows a scenario when a Net-View 6000 product is employed (Col. 2, ll. 50-58). In contrast, FIG. 3 shows a scenario when Tivoli for Network Connectivity module (TFNC) is used (Col. 3, ll. 13-22). Since the Net-View 6000 product is different from the TFNC product, FIGS. 2 and 3 represent different embodiments and so cannot be combined in an anticipation rejection.

D. Inherency

Appellants' Appeal Brief at page 21 traversed the rejection of claim 1 under 35 U.S.C. §103 as being based on an improper inherency assertion with respect to Ahmed. In particular, Appellants traversed the assertion that Ahmed's PCs inherently include a remote software module "including a first software component cascaded with a second stage software component." The Examiner's Answer concedes that to show inherency, extrinsic evidence must make it clear the missing matter is necessarily present in the reference and it would be so recognized by one of ordinary skill in the art. In view of this concession, the Examiner's Answer at page 21 refers to Appellants' own specification (page 28) as providing the required extrinsic evidence. This is improper for several reasons. First, Appellants' disclosure at page 28 of their specification is not prior art and so is not proper extrinsic evidence of inherency. Second, Appellants'

disclosure at page 28 is not related to showing that Ahmed inherently discloses a first software component cascaded with a second stage software component.

The Examiner's Answer further asserts at page 22 that there are two pieces of extrinsic evidence that show that Ahmed's PCs inherently include a remote software module "including a first software component cascaded with a second stage software component." The first piece of evidence is that a PC requires an operating system to operate. The second piece of evidence is that an operating system includes subroutines and/or programs for controlling different parts of a computer system. While the above pieces of evidence are true, they do not clearly show that a first software component cascaded with a second stage software component is necessarily present in Ahmed. Indeed, both pieces of evidence do not make reference to Ahmed and both pieces of evidence do not mention cascaded software components.

E. Ahmed Fails to Disclose the Claimed Fault Detector

Appellants' Appeal Brief at page 22 traversed the rejection of claim 1 under 35 U.S.C. §103 because Ahmed fails to disclose a fault detector that detects a fault by detecting "a fault in the remote software module by detecting whether the data message or a derivative thereof flows entirely through at least one of the first stage software component and the second stage software component" as recited in claim 1. The Examiner's Answer at page 23 asserts that Appellants' Specification does not support the recited fault detector. As pointed out above in Section A at pages 2 and 3, there is support for the recited fault detector at Page 23, lines 11-22, Page 28, lines 14-24, Page 30, lines 17-23 and step S54 of FIG. 8 of Appellants' Specification.

The Examiner's Answer at page 24 discounts the above mentioned disclosure in Appellants' Specification by asserting "the invention is based on detecting whether the flow of the data message or a derivative thereof is blocked or disrupted (see applicant's summary)." Appellants traverse the assertion. Claim 1 does not mention blocking or disrupting flow of a data message. It appears that the Examiner's Answer is improperly reading in limitations from Appellants' Specification into claim 1. *E.I. duPont & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433-32, 7 USPQ2d 1129, 1131-32 (Fed. Cir. 1988).

The Examiner's Answer at page 24 further asserts that "Ahmed does teach the process wherein the ping message flows entirely through the software component(s)." Appellants disagree. As pointed out at page 19 of Appellants' Appeal Brief, Ahmed does not disclose outputting the same ping that was originally sent. As conceded at page 20 of the Examiner's Answer, Ahmed outputs a reply message and not the original ping message. Accordingly, the original ping message of Ahmed does not flow entirely through a software component.

F. Motivation to Alter Ahmed

Appellants' Appeal Brief at pages 28-31 traversed the rejections of claims 9-12 under 35 U.S.C. §103 because there was no motivation in either Ahmed or Sato to alter Ahmed to use the recited fault detector. The Examiner's Answer at page 25 asserts that sufficient motivation was presented in the Office Action of March 20, 2006. Regarding the rejections of claims 9-12, Appellants' Appeal Brief at pages 28-31 pointed out that the Office Action relied on the assertion that Ahmed disclosed the recited fault detector when in fact Ahmed did not. Since the Office Action and the

present Examiner's Answer have asserted that Ahmed uses the recited fault detector, why would there be any need to suggest altering Ahmed to use a fault detector that it already possesses? Since there is no need, Appellants stand by their assertion that no such motivation has been provided.

G. Motivation to Alter Ullman

Appellants' Appeal Brief at pages 32-33 traversed the rejections of claims 13, 16, 18 and 21 under 35 U.S.C. §103 because there was no motivation in either Ullman or Sato to alter Ullman to detect "the data message or a derivative at a group of logical nodes within the installed remote software module to determine flow of the data message, or a derivative thereof, between the logical nodes and, hence, flow entirely through at least one of the first stage software component and the second stage software component." The Examiner's Answer at page 25 asserts that FIG. 8 of "Sato expressly teaches the process of detecting the data message at a second operating system, i.e., detecting the existence of the data message between the logical nodes." The Examiner's Answer is misunderstanding Sato. The alive message referred to in FIG. 8 of Sato is used by fault detecting means 401 to determine if OS 105 has a fault (Col. 6, ll. 49-51). While Sato discloses determining if an alive message arrives at the second fault monitoring agent 108, Sato does not detect whether the alive message flows entirely through the first OS105. Accordingly, Appellants' assertion that there was no motivation in either Ullman or Sato to alter Ullman to detect "the data message or a derivative at a group of logical nodes within the installed remote software module to determine flow of the data message, or a derivative thereof, between the logical nodes and, hence, flow entirely through at least one of the first stage software component and

the second stage software component" has merit. Accordingly, the rejection is improper and should be withdrawn.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Freeman", written over a horizontal line.

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